



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

September 28, 1972

Hon. Robert S. Calvert
Comptroller of Public Accounts
State Finance Building
Austin, Texas 78774

Opinion No. M-1227

Re: Authority to expend monies
for positions exempt from
the Position Classification
Plan.

Dear Mr. Calvert:

Your recent request for an opinion reads in part as follows:

"This office has been requested to establish certain exempt positions under the authority of Article 6252-11, V.A.T.S.

". . .

"In view of Attorney General Opinion Nos. 1141 and 1191, please advise whether this office is legally authorized to expend monies out of funds already appropriated for salary for these exempt positions."

Section 2 of Article 6252-11, Vernon's Civil Statutes, (Position Classification Act of 1961) provides in part:

"All regular, full-time salaried employments within the departments and agencies of the State specified in Article III, and the Central Education Agency, Deaf and Blind Schools in Article IV, and all such State employments in positions other than for Judges, District Attorneys, and Assistant District Attorneys specified in Article I of the biennial Appropriations Act, shall conform with the Position Classification Plan hereinafter described and with the salary rates and provisions of the applicable Appropriations Act commencing with the effective date of this Act, with the exceptions and deferments hereafter provided in this Section.

". . .

"Specifically excepted from the Position Classification Plan hereinafter described are constitutionally named and elective officers and officials; officers appointed by the Governor; the chief executive head of any State agency covered by the first two paragraphs of this Section; teachers in public schools and special schools of the State, and in the State colleges, universities, and other agencies of higher education; research personnel in State colleges, universities, and other agencies of higher education; medical doctors; professional services compensated on a fee basis; hourly employees, part-time, and temporary employees; and such other positions in the State Government as have heretofore been or as may hereafter be excluded from such Position Classification Plan by executive order of the Governor or by direction of the Legislature." (Emphasis added.)

Article 6813b, Vernon's Civil Statutes, provides that salaries of State employees "shall be in such sums or amounts as may be provided for by the Legislature in the biennial Appropriations Act."

The General Appropriations Act for the fiscal year beginning September 1, 1972 (S.B. 1, Acts 62nd Leg., 3rd C.S. 1972) makes appropriations for the payment of salaries of positions included in the Position Classification Plan, as well as for positions excluded from the Position Classification Plan. This is specifically authorized by the provisions of Articles 6252-11 and 6813b, Vernon's Civil Statutes, above quoted.

An appropriations bill may detail, limit or restrict the use of funds therein appropriated, provided such appropriation does not repeal, modify or amend an existing general law. Attorney General's Opinion M-1199 (1972), and authorities cited therein.


It is further our opinion that the principles announced and the holdings in Attorney General's Opinions M-1141 (1972) and M-1191 (1972) were not applicable to Article 6252-11, since in those opinions we were concerned with the lack of any valid pre-existing law to support an appropriation and the lack of any standard, policy or guideline to support the unauthorized delegation of power. We find within Article 6252-11 the declaration of legislative policy which may serve to support the delegation of authority, and the law itself is adequate to support exemptions found to be justified and ordered by executive order.

As previously noted, the appropriation for salaries of exempt positions (whether excluded from the Position Classification Plan "by executive order of the Governor or by direction of the Legislature") is specifically authorized by the provisions of Article 6252-11, Vernon's Civil Statutes. You are therefore advised that the Comptroller of Public Accounts is legally authorized to expend monies out of funds appropriated for the payment of salaries of exempt positions.

S U M M A R Y

The Comptroller of Public Accounts is legally authorized to expend monies out of funds for the payment of salaries of positions in State government which have been exempted from the Position Classification Plan by executive order of the Governor or direction of the Legislature, as provided in Article 6252-11, Vernon's Civil Statutes.

Very truly yours,


CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by John Reeves
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

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